

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Lamont Williams,
Petitioner

v.

Case No. 1:07-cv-897

Timothy Brunsman, Warden,
Respondent

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed December 11, 2008 (Doc. 16).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections have been filed to the Magistrate Judge's Report and Recommendation.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation to be correct.

Accordingly, **IT IS ORDERED** that the Magistrate Judge's Report is **ADOPTED** as follows:

1) Petitioner's petition for writ of habeas corpus be **DISMISSED WITHOUT PREJUDICE** to refiling after petitioner has exhausted the arguably remedy of a

delayed application to reopen his appeal pursuant to Ohio App. R. 26(B).

2) Respondent's request for a dismissal of the petition with prejudice is **DENIED**.

3) Petitioner's motion to stay proceedings is **DENIED**.

4) A certificate of appealability will not issue under the standard set forth in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), because "jurists of reason" would not find it debatable whether this Court is correct in its procedural ruling that petitioner has failed to exhaust state remedies and that this case should be dismissed without prejudice pending exhaustion of such remedies.¹

5) This Court certifies that pursuant to 28 U.S.C. § 1915(a)(3) an appeal of this Order would not be taken in good faith, and therefore **DENIES** petitioner leave to appeal *in forma pauperis*. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997). Petitioner remains free to apply to proceed *in forma pauperis* in this Court of Appeals.

SO ORDERED.

Date: January 12, 2009

s/Sandra S. Beckwith

Sandra S. Beckwith, Senior Judge
United States District Court

¹Because this Court finds the first prong of the *Slack* standard has not been met in this case, it need not address the second prong of *Slack* as to whether or not "jurists of reason" would find it debatable whether petitioner has stated viable constitutional claims for relief in his habeas petition. *See Slack*, 529 U.S. at 484.